

### **REMARKS/ARGUMENTS**

The rejection presented in the Office Action dated April 24, 2008, (hereinafter Office Action) has been considered but is believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

The teachings of U.S. Patent No. 5,916,024 to Von Kohorn (hereinafter “Von Kohorn”) and U.S. Patent No. 5,905,523 to Woodfield *et al.* (hereinafter “Woodfield”) alone, or in combination, have not been shown to, and do not, teach or suggest several of the claimed limitations; therefore, Applicant respectfully traverses the § 103(a) rejection. Specifically, neither of the asserted references has been shown to teach or suggest a terminal of a radio system that transmits response data to a network server in a wireless radio connection, as claimed in each of the independent claims. The assertion that Von Kohorn teaches sending response data through a buffer store 366 and register 368 to transmit to a card is unsupported and appears to be incorrect as Von Kohorn teaches that scoring logic 370 controls the printing of cards (*see, e.g.*, Col. 43, line 18 *et seq.*). Moreover, the information printed on Von Kohorn’s cards is not the asserted response data entered by an audience member but rather markings that reflect awards for the member’s responses. Also, the printing of markings on cards has not been shown to correspond to the claimed transmission of response data through a radio system. No portion of Von Kohorn has been shown to teach transmitting response data, as claimed.

The reliance on the teachings of Woodfield to overcome these deficiencies in the teachings of Von Kohorn is misplaced because Woodfield also fails to teach transmitting response data to a network server in a wireless radio connection. As acknowledged in the Office Action, Woodfield merely teaches sending information from a handset 11 to a local controller 8 via an infrared link, but any transmission of such information to the asserted network server is effected through a modem, not a wireless connection through a radio system. Thus, Woodfield teaches that information may only be transmitted to the asserted network server via a modem and the asserted transmitter of the handset 11 is not configured to transmit information to a network server in a wireless radio connection, as claimed. As

neither of the asserted references teaches or suggests the claimed transmission of response data to a network server in a wireless radio connection, any combination thereof must also fail to correspond to such limitations. Without a presentation of correspondence to each of the claimed limitations, the § 103(a) rejection is improper. Applicant accordingly requests that the rejection be withdrawn.

In addition, neither the response unit 22 of Van Kohorn nor the handset 11 of Woodfield has been shown to correspond to the claimed terminal of a radio system. In contrast, the asserted response unit 22 of Von Kohorn is part of a remote receiving station that an audience member can use to enter a response and receive a record of such response (*see, e.g.*, column 15, line 4 *et seq.*). While the response unit 22 may be a separate piece of equipment, there is no teaching or suggestion that the response unit communicates with the television system 28 using a radio system. Rather, Figs. 1, 3, 4, and 8 illustrate that the response unit is connected to the television system via lines 124 and 696 (or lines 346 and 348 shown in Figs. 6-8) and is merely part of the remote receiving station (*see, e.g.*, Col. 3, line 41-46; Col. 4, lines 29-30; Col. 13, lines 54-65; Col. 14, lines 15-17; Col. 15, lines 4-7; and Col. 21, lines 6-57). The failure of the response unit to correspond to the claimed terminal of a radio system is further evidenced by the failure of the Office Action to identify a receiver in the asserted response unit. The reliance on an asserted receiver 228 in Fig. 8 is baseless since Fig. 8 does not include reference numeral 228 and instead reference numeral 228 in Figs. 6 and 7 identifies a camera. Thus, contrary to the assertions in the Office Action, Von Kohorn does not teach or suggest that the response unit would be a terminal of a radio system.

Also, as explained previously, Woodfield's handset 11 is not a terminal of a radio system. Rather, the infrared connection between the handset 11 and the local controller 8 (*see, e.g.*, column 5, lines 24-37) is not a radio connection as it uses infrared light instead of radio waves for communication. Further, Woodfield fails to teach a wireless connection to the handset 11 for transmitting separated data, as claimed. In contrast, Woodfield only teaches that the local controller 8 (asserted as corresponding to the claimed transmitter) polls handsets (*see, e.g.*, Col. 5, lines 66-67 and Col. 6, lines 18-26). Thus, neither the

wired response unit of Von Kohorn nor the infrared handset of Woodfield has been shown to correspond to the claimed terminal of a radio system. Without a presentation of correspondence to each of the claimed limitations, the § 103(a) rejection is improper, and Applicant accordingly requests that the rejection be withdrawn.

In order to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); and moreover, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). *See, e.g.*, MPEP § 2143.03. The limitations directed to at least a terminal of a radio system that transmits response data to a network server in a wireless radio connection appear to have been ignored and are not taught by either of the cited references. Rather, the asserted terminal of Von Kohorn is connected to a television system via lines and the asserted terminal of Woodfield communicates using infrared light such that neither of the asserted terminals would correspond to the claimed terminal of a radio system. Without a presentation of correspondence to each of the claimed limitations, the § 103(a) rejection is improper. Applicant accordingly requests that the rejection be withdrawn.

Dependent Claims 2-13, 15, 16, 21-24, 32, and 33 depend from independent Claims 1, 14, 20, and 31, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the above-discussed combination of Von Kohorn and Woodfield. While Applicant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. “If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious.” MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent Claims 2-13, 15, 16,

21-24, 32, and 33 are also patentable over the asserted combination of Von Kohorn and Woodfield.

With respect to dependent Claims 6, 12, and 23, Applicant traverses the assertions of Official Notice that a receiver of Von Kohorn or Woodfield would be a DVB-H receiver and that for separating data, a screen shot would be captured from a received television broadcast. First, the Examiner has not provided any evidence in support of these assertions and instead appears to be impermissibly asserting that Von Kohorn and/or Woodfield constitutes facts outside of the record which are capable of instant and unquestionable demonstration as being well known or obvious to one skilled in the art. Applicant notes that allegations concerning specific knowledge of the prior art...should be supported and the applicant should be given the opportunity to challenge the correctness of such assertions and allegations. The facts so noticed serve to “fill the gaps” which might exist in the evidentiary showing and should not comprise the principle evidence upon which a rejection is based. MPEP § 2144.03, citing *In re Ahlert* 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970).

The taking of Official Notice is traversed, and in accordance with MPEP § 2144.03, Applicant requests that the Examiner provide a reference in support of the assertion that it is well known for a receiver of the television systems of Von Kohorn and Woodfield to be a DVB-H receiver when neither of the references mention using Digital Video Broadcasting or that neither of the asserted handheld devices (response unit 22 and handset 11) receive digital television broadcasting over a digital television network. Applicant further requests that support be provided for the assertion that for separating data, Von Kohorn would capture a screen shot from a received television broadcast when the asserted data being separated in Von Kohorn is an instructional signal that is in a signal separate from the received television broadcast program signal (*see, e.g.*, Col. 14, lines 15-16). The unsupported assertions of “Official Notice” do not overcome the above-discussed deficiencies of Von Kohorn and Woodfield and do not provide any evidence that such asserted facts would be combined with the teachings of Von Kohorn and Woodfield. Thus,

the asserted teachings do not alone, or as modified, correspond to the claimed limitations, and the rejection should be withdrawn.

Moreover, Applicant further traverses the § 103(a) rejection because a skilled artisan would not be motivated to look to the teachings of Von Kohorn or Woodfield as asserted. In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. The mere interaction between a user and a television system as taught by Von Kohorn or Woodfield fails to recognize or correspond to the limitations directed to using a terminal of a radio system and transmission using such system. Thus, modifying Von Kohorn to use an infrared connection disregards the requirement of analyzing Applicant's claimed subject matter *as a whole*. A skilled artisan's combination of the asserted teachings would still result in a user needing to be within close range of a television unit rather than the freedom for a user to be located within the range of a radio system as claimed. Without a presentation of the requisite suggestion or motivation to combine the cited references as asserted, the § 103(a) rejection is improper, and Applicant requests that it be withdrawn.

The assertion that a skilled artisan would look to the teachings of Woodfield to allow Von Kohorn's response unit to use an infrared connection to a television system is also based upon hindsight reasoning. The assertion that Von Kohorn would benefit from the use of direct switching is illogical as the direct switching of Woodfield refers to the polling of multiple handsets. Since Von Kohorn uses fixed lines, there would be no need for polling. Also, there is no suggestion that a remote receiving system of Von Kohorn would have more than one response unit or that multiple units would be polled. A skilled artisan using common sense would not look to use Woodfield's infrared connection, which is also limited to having the communicating devices be within close proximity, to receive instructional data from a television system. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). "Not only must the

claimed invention as a whole be evaluated, but so also must the references as a whole, so that their teachings are applied in the context of their significance to a technician at the time--a technician without our knowledge of the solution.” *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985). Therefore, Applicant respectfully submits that the proffered motivation is a hindsight combination of prior art based on Applicant’s teachings, and the requisite showing of motivation to combine Von Kohorn with Woodfield has not been met. Applicant accordingly requests that the § 103(a) rejection be withdrawn.

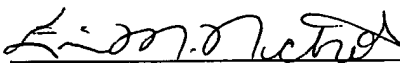
It should be noted that Applicant does not acquiesce to the Examiner’s statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant’s invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner’s characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.073PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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